FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 370/1999
(*Kashiram Vithoba Navghare* **VERSUS** *Pandurang Kisan Naoghare & 5 others***)**
AND
Second Appeal No. 371/1999
(*Kashiram Vithoba Navghare* **VERSUS** *Pandurang Kisan Naoghare & 5 others***)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri Deshpande, Advocate for the appellant.(In both the appeals)
Shri Gawali, Advocate for the respondents.(In both the appeals)

CORAM : Smt. Vasanti A. Naik, J.
DATE : 13th July, 2007.

Heard learned counsel for the parties.

Since these two second appeals are filed against the common judgment rendered by the trial Court as well as the appellate Court in two different suits filed by the appellant and the respondent herein, these two second appeals are being considered for admission and disposed of by this common order. The respondents Kisan and Meenabai in the instant case instituted a suit against appellant Kashiram bearing Regular Civil Suit no.91/ 1992 for partition and separate possession for their 1/6th share in the suit property. According to the plaintiffs, the property was initially owned by one Vithoba. Vithoba had two sons and four daughters. Plaintiff Kisan and Meenabai are one of the

sons and daughters of deceased Vithoba. Since Vithoba had six issues, according to the plaintiffs, they were entitled to 1/6th share in the suit properties left behind by Vithoba.

The present appellant/defendant in Regular Civil Suit no.91/1992 resisted the claim of the plaintiffs and pleaded that the other son of Vithoba by name Chandrakant had sold the suit properties to the father of the present appellant Kashiram by three separate registered sale-deeds. According to Kashiram, there was a partition of the joint family properties between Kisan and Chandrakant, the two sons of Vithoba, and therefore, Chandrakant could have duly sold the suit properties in favour of Kashiram's father. He further pleaded that he was a bona fide purchaser for value without notice and the sale was for legal necessity.

Similarly, appellant Kashiram filed a suit against the present respondents bearing Regular Civil Suit no.90/1992 for a permanent injunction restraining the defendants/present respondents from disturbing the possession of Kashiram. Both these suits were tried together and common evidence was tendered in the suit. The trial Court, by a judgment and decree dated

29.04.1995 decreed the suit filed by Kisan and Meenabai and dismissed the suit filed by appellant Kashiram. The trial Court held that the plaintiffs in Regular Civil Suit no.91/1992 were entitled to 1/6th share in the suit property. The Court held that Kahsiram was not a bona fide purchaser for value without notice and the sale was not for legal necessity. The trial Court further held that the suit properties were the self acquired properties of deceased Vithoba. The plea raised by the defendant Kashiram that there was partition between Kisan and Chandrakant was negatived by the trial Court. The trial Court dismissed the suit filed by appellant Kashiram for grant of permanent injunction.

In an appeal preferred by Kashiram against the common judgment in both the civil suits, the appellate Court confirmed the findings recorded by the trial Court. In respect of Regular Civil Suit no.90/1992 filed by Kashiram, the appellate Court recorded a finding that Kashiram did not prove his possession over the suit property and was not entitled to a decree of permanent injunction. The appellate Court reappreciated the entire evidence tendered by the

parties on record to uphold the findings recorded by the trial Court. The Courts in effect, however, held that appellant Kashiram was entitled to retain the share of Chandrakant in the suit property.

The findings recorded by both the Courts are based on the proper appreciation of the material evidence on record. All the findings recorded by the Courts are pure findings of fact which do not give rise to any substantial question of law.

The second appeals are, therefore, dismissed with no order as to costs.

JUDGE

APTE